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A Senate aide told BNA Jan. 23 that language for an updated regulatory reform bill by Sens. Fred Thompson (R-Tenn.), chairman of the Senate Governmental Affairs Committee, and Carl Levin (D-Mich.), would be circulated the week of Jan. 26 before it is introduced in mid-February.

The bill would not differ much from S 981, the regulatory reform bill Thompson and Levin introduced in June 1997, the aide said (28 ER 441). That bill sought to streamline the rule-making process by implementing a system for cost-benefit analysis and limited judicial review. It was criticized by the environmental community.

Takings, Reg Reform. The most "insidious" attacks on the environment, according to *Gathering Storm: Coming Environmental Battles in the 105th Congress*, an NRDC report released at the press conference, will be "takings legislation that targets state and local land use measures, and 'regulatory reform' legislation that would hamstring federal enforcement of the full range of environmental and public health safeguards."

Levin's aide said the new regulatory reform legislation would contain "some clarifying language" but would not differ much in substance from S 981. She would not offer specifics on the legislation.

Keith Cole, an industry attorney who previously worked on the Republican staff of the Senate Small Business Committee, told BNA Jan. 23 that a common thread in environmental group complaints about the bills "seems to be that if you make an agency do more analysis or assessment, then it's less time you're spending protecting the environment."

The regulatory reform bill, he said, "is a sunshine bill" that "lets people look at what the regulatory costs and benefits of a law are."

Endangered Species Act. A Senate bill (S 1180) that would reauthorize the Endangered Species Act contains rollbacks of protections, the NRDC report said. Among other things, it fails to assure that development activities would not impede the recovery of endangered species, while imposing costly new requirements for listing and recovery planning, and weakening the consultation process among federal agencies.

But Cole said the current law also does not do much to protect species because it creates too many disincentives. The new bill would force permitting authorities to justify why a species should be listed and involves more people in the consultation process, which environmental groups typically push for in other areas, Cole said.

Small Riders. Rather than the full frontal attack environmental groups said was waged by the 104th Congress, attempts to weaken environmental protections also will come more in the form of small riders appended to bills.

"When the fiscal 1999 budget process begins moving forward this spring, there are likely to be battles over both funding levels and anti-environment 'riders' of the type that have found their way into conference agreements for appropriations bills in recent years," the NRDC report said.

Climate change and the Clean Air Act regulations tightening limits on ozone and particulate matter also will be areas that can expect a battle, Deb Callahan, executive director of the League of Conservation Voters, said.

The NRDC report said several Senate opponents of the climate change accord signed in December 1997 in Kyoto, Japan, plan to seek "formal Senate action to condemn" the agreement.

"A heated and high-profile battle can be expected over any effort to put the Senate on record in opposition to the Kyoto Protocol," the NRDC report said.

Environmental groups also are concerned about a takings bill "that undermines state and local land use protections," Greg Wetstone, NRDC's legislative director, said. It would "give developers the ability to take measures straight to federal court" instead of addressing matters through local permitting authorities, he said. Most localities do not have the resources to engage "in that kind of fight," he said.

Also on the environmental group radar screen, Wetstone said, is HR 2155, which would block the U.S. Army Corps of Engineers effort to repeal Nationwide Permit 26 for filling wetlands.

The difference between this Congress and the 104th, Wetstone said, is that most of the blatant action came out of the House but did not pass the Senate, which was the "moderating body" at the time. Now the Senate has become much more conservative, he said, and legislation that environmental groups would describe as potentially harmful to the environment has a better chance of getting through.

Cole told BNA that most of the disagreement on the bills was pointless anyway because most of the legislation, if not all, does not have a chance of going anywhere before the session ends.

By SUSAN BRUNINGA

Enforcement

ASARCO to Spend Millions on Projects To Settle Violations in Montana, Arizona

DENVER—ASARCO Inc. reached an agreement Jan. 23 with the federal government that will require the company to pay for more than \$50 million in environmental projects nationwide and correct alleged hazardous waste and water violations at facilities in Montana and Arizona, prosecutors said (U.S. v. ASARCO Inc., DC Mont, No. CV-98-3-H-CCL, 1/23/98; U.S. v. ASARCO Inc., DC Ariz, No. CIV98-0137-PHX-R/S, 1/23/98).

In addition, the mining and smelting company will pay more than \$6 million in penalties for alleged violations of the Resource Conservation and Recovery Act and the Clean Water Act at a facility in East Helena, Mont., and for alleged violations of the Clean Water Act at a facility near Kelvin, Ariz., according to the Environmental Protection Agency.

EPA said the agreement marked the first time a company has agreed to establish a court-enforced environmental management system applicable to all of its facilities nationally. The environmental management system will cover 38 ASARCO facilities with more than 6,000 employees in seven states, according to Susan Zazzali, an environmental engineer with EPA Region VIII.

The agreement is contained in two consent decrees lodged in federal district courts in Montana and Arizona, Zazzali said. Under the decrees, ASARCO will

pay a total of \$6.38 million in penalties, \$1.5 million of which will be paid to Arizona, EPA said.

First for Government. EPA said the agreement also was the first time the federal government has entered into a consolidated settlement resolving violations of different environmental statutes at more than one of a company's facilities.

The settlement "requires ASARCO to carry out its environmental responsibility to correct current violations and remedy harm to the environment," EPA Administrator Carol M. Browner said. "It should serve as a model for other companies in addressing their environmental responsibilities."

Richard de J. Osborne, chairman of the board and chief executive officer of ASARCO, said the company believes "this cooperatively developed agreement between ASARCO and [EPA] establishes a basis for the company and federal and state agencies to work together in the future."

He said the company invited and "welcomed the open dialogue that has been part of the process and look forward to working cooperatively with the EPA and state environmental protection agencies."

ASARCO estimated the cost of the new capital projects at around \$61.5 million, covering "a number of operational changes to resolve disputed environmental compliance issues" at the Arizona copper mine and the Montana lead smelter, Osborne said.

Far-Reaching Investigation. The agreement capped a two-year investigation that began after ASARCO came to EPA "when they realized they had multiple compliance issues across the country and asked that discussions be elevated to a national level," Zazzali told BNA. Although the terms of the settlement apply to all 38 sites, the allegations of statutory violations apply only to the sites in Montana and Arizona.

The federal government alleged ASARCO's East Helena, Mont., facility violated the Clean Water Act by illegally discharging industrial waste water without a permit, and violated RCRA by illegally storing, treating, and disposing of certain hazardous wastes.

At the Ray Mine Complex near Kelvin, Ariz., ASARCO allegedly violated Clean Water Act provisions related to unauthorized discharges and inadequate storm water containment. The company was also charged by Arizona with violations of state surface water quality standards.

Under the agreement, ASARCO will spend more than \$50 million to reduce releases to ground water and surface water of heavy metals such as arsenic, mercury, and lead, EPA said.

Internal Management System. ASARCO's implementation of an internal environmental management system designed to help the company identify and correct the root causes of the company's alleged noncompliance will be subject to supervision by the federal district court, EPA said.

The system will include annual reporting to EPA of hazardous waste spills, permit exceedances, and toxic and pollutant releases, as well as reporting on recycling programs, and water and energy use, EPA said. ASARCO's employees will be trained in environmental compliance.

Cleanup at the Montana operation, the largest ever undertaken by a mining and smelting company under RCRA, will address environmental damage resulting from 100 of smelting activities.

In addition to the cleanup, ASARCO has agreed to develop and use criteria to limit the types of materials it can use nationwide in its smelting process, EPA said. The practical effect of these criteria will be reduced hazardous emissions from four ASARCO smelters, EPA said, because the materials in question may contain hazardous ingredients such as mercury, cadmium, and arsenic.

At the Ray Mine complex in Arizona, ASARCO will implement an extensive work plan to control illegal water discharges from its 6,100 acre open-pit copper mine and ore-processing facility, EPA said. Heavy metals in the discharges have been contaminating a creek that flows through the site, EPA said.

In addition, ASARCO has agreed to expand its storm water containment system at the site.

By TRIPP BALTZ AND BILL CARLILE

Emergency Planning

Agency Denies Industry Plea to Remove Phosphoric Acid From Toxic Release List

Phosphoric acid will not be removed from the list of chemicals regulated under the Toxic Release Inventory, the Environmental Protection Agency announced Jan. 23 (63 FR 3566).

In a denial of petition for delisting, the agency said its action was based on its conclusion that the phosphates generated during neutralization of phosphoric acid may cause algal blooms. Algal blooms deplete oxygen in water bodies and have other effects that lead to fish kills and adverse changes in the composition of plant and animal life.

Phosphoric acid was included in the initial list of chemicals and chemical categories established under Section 313 of the Emergency Planning and Community Right-To-Know Act. Under the law, certain companies using toxic chemicals on the list are required to report their environmental releases of such chemicals by July 1 of each year.

In a petition filed in November 1990, the Fertilizer Institute asked EPA to remove phosphoric acid from the TRI. The Fertilizer Institute's petition was similar to one that Ecolab Inc. submitted in December 1989 requesting that EPA delist the acid. Although Ecolab Inc. later withdrew its request, EPA issued a notice in response, stating that the agency would have denied Ecolab's petition due to concern over phosphoric acid's contribution to oxygen depletion in water bodies, or eutrophication.

EPA Mulls Phosphates Category. In the notice, EPA also asked for public comment on the creation of a TRI phosphates category that would include the acid. The agency intends to propose the creation of the phosphates category at a later date.

The Fertilizer Institute's petition to delist the acid focused mainly on environmental exposure to phosphoric acid from facilities covered by EPCRA Section 313. The petitioner argued that industrial releases of the chemi-